

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

FILED  
2006 MAY -9 PM 2:34  
CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

CONOTECH, LLC, a Nevada limited  
liability corporation,

Plaintiff,

v.

ACCURATE MACHINERY SALES, INC., a  
Florida corporation,

Defendant.

JUDGE KATHLEEN CARDONE *ad*

CIVIL ACTION NO.

EP06CA0169

**PLAINTIFF'S ORIGINAL COMPLAINT**

Plaintiff Conotech, LLC ("Conotech"), by and through its undersigned counsel, files its Original Complaint against Accurate Machinery Sales, Inc. ("AMS"), and for cause of action states:

**A. THE PARTIES**

1. Conotech is a Nevada limited liability corporation with its principal place of business at Calle Chimeneas 4499, Parque Industrial Juarez, Ciudad Juarez, Chihuahua, Mexico 32630.

2. AMS is a Florida corporation with its principal place of business at 215 S.W. 21<sup>st</sup> Terrace, Fort Lauderdale, Florida 33312. AMS may be served by service upon its registered agent, John M. Ruppert, 215 S.W. 21<sup>st</sup> Terrace, Fort Lauderdale, Florida 33312.

**B. JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

4. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

### C. FACTS

5. In September, 2005, Conotech contacted AMS to discuss the possibility of purchasing a Trumpf dual pallet flying optic laser center (the "laser"). On September 12, 2005, Conotech co-owner Henry Coletti ("Coletti"), on behalf of Conotech, signed a sales contract (the "contract") to purchase the laser for \$235,000.00. A true and correct copy of the contract is attached hereto as "Exhibit A" and incorporated herein as if fully set forth verbatim.

6. Per the contract, on September 23, 2005, Conotech made a \$35,000.00 deposit toward the purchase price of the laser, and paid another \$216,200.00 to AMS on November 2, 2005, prior to delivery of the laser.

7. AMS subsequently shipped the laser to El Paso, Texas ("El Paso"), where it arrived on November 18, 2005. Conotech transported the laser to Ciudad Juarez, Chihuahua, Mexico ("Juarez") the following week.

8. On or about November 25, 2005, Conotech contacted AMS to arrange for installation of the laser and emphasized to AMS that Conotech's production plant could only open once the laser was installed. AMS scheduled the installation to begin on or about December 26, 2005. On December 14, 2005, AMS notified Conotech that the installer would not be available until January 16, 2006. Conotech advised AMS that the January 16, 2006 date was unacceptable because the delay would hold up production at a substantial cost to Conotech. Between January 9, 2006 and January 13, 2006, Conotech made numerous telephone calls to AMS to verify the installation date of January 16, 2006. On January 13, 2006, AMS notified

Conotech that the installer may be delayed. The installer did not arrive on the scheduled date of the installation, January 16, 2006. On January 17, 2006, Conotech's attorney sent a letter to AMS demanding installation of the laser. AMS contacted Conotech on January 18, 2006 and promised the installer would arrive in El Paso on February 6, 2006.

9. The installer, George Devlin ("Devlin") and his assistant arrived in El Paso, and Conotech drove them to its plant in Juarez on February 6, 2006. Devlin inspected the laser and gave Conotech a checklist of items that needed to be completed before the laser could be installed. He then went back to El Paso. Conotech completed the checklist by 1:00 p.m. on February 7, 2006. On February 7, 2006, Devlin refused to return to Juarez to complete the installation. Conotech informed AMS that Devlin refused to complete the installation. On February 14, 2006, Conotech found another installer, Kevin Crane ("Crane") with Electro-Optic Services, LLC who agreed to install the laser. Crane arrived in Juarez on February 23, 2006 to install the laser. On February 24, 2006, Crane notified Conotech that the resonator in the laser was inoperable and would have to be replaced. Conotech immediately ordered a new resonator at a cost of \$49,468.13. Upon further inspection, Crane discovered other serious defects in the laser, including dangerous wiring that could have caused serious harm or death if someone had attempted to operate the laser. On March 1, 2006, Conotech received the new resonator, and Crane began installing the laser. Despite working on installation since March 1, 2006, the numerous defects in the laser have prevented a complete installation of the laser to date. Additionally, Conotech has incurred costs of \$49,468.13 for the replacement resonator, \$15,661.55 for other replacement parts, and \$47,332.08 for installation.

**D. COUNT 1 – BREACH OF CONTRACT**

10. On September 12, 2005, Conotech and AMS entered into a written sales contract. *See Exhibit A.* The contract provided that Conotech would provide \$35,000 as a deposit upon signed acceptance of the contract, and the remaining \$200,000 of the purchase price prior to shipment of the laser. The contract further provided that AMS would deliver the laser to Juarez complete with all parts necessary to make the laser operational and provide a technician to start the laser, run test parts to ensure the laser was working properly, and provide three days of training on the laser. Upon delivery of the laser to Juarez, the contract provided that Conotech would unload and place the laser, supply electrical, air and gases, and provide employees to help with all the non-technical aspects of the installation of the laser. Conotech has performed its obligations under the contract. AMS, however, has not performed any of its contractual obligations. AMS's nonperformance constitutes a breach of the parties' agreement.

11. As a direct and proximate result of AMS's breach, Conotech has suffered the following damages:

- a. Reasonable expenses in reliance on AMS's performance of the contract.
- b. Replacement cost of technician to properly install the laser.
- c. Replacement cost of equipment critical to making the laser operational.
- d. Lost profits of approximately \$5,285.00 each day installation of the laser has been and continues to be delayed.

12. As a result of AMS's breach, Conotech has retained counsel and seeks reimbursement for its reasonable attorney fees.

**E. COUNT 2 – BREACH OF WARRANTY**

13. The contract contained an express warranty that AMS would supply all parts necessary to make the laser operational. AMS failed to supply the necessary parts and, therefore, breached this express warranty. In addition, AMS breached the implied warranty of merchantability of the laser because the laser was not operational when received from AMS and was, therefore, not fit for the ordinary purposes for which such lasers are used.

14. As a direct and proximate result of AMS's breach, Conotech has suffered the following damages:

- a. Reasonable expenses in reliance on AMS's performance of the contract.
- b. Replacement cost of technician to properly install the laser.
- c. Replacement cost of equipment critical to making the laser operational.
- d. Lost profits of approximately \$5,285.00 each day installation of the laser has been and continues to be delayed.

15. As a result of AMS's breach, Conotech has retained counsel and seeks reimbursement for its reasonable attorney fees.

**F. COUNT 3 - FRAUD**

16. In their September, 2005 telephone conversations, John Ruppert, AMS's president, specifically stated to Coletti that AMS would supply to Conotech a fully operational laser and the technical support required for installation. Coletti attempted to purchase a Bystronic laser from AMS, but was told that unit was sold. Ruppert stated that the Trumpf laser was as good as the Bystronic unit and that Conotech would be extremely happy with it. Ruppert also stated that the resonator had been totally rebuilt, and AMS had it operational. These statements were false and misleading because the laser contained numerous defective parts,

including the resonator, and was not operational. The statements were made with the intention to induce Conotech to enter into the contract for purchase of the laser. As a direct and proximate result of these misrepresentations, Conotech entered into the agreement and suffered the following damages:

- a. Reasonable expenses in reliance on AMS's performance of the contract.
- b. Replacement cost of technician to properly install the laser.
- c. Replacement cost of equipment critical to making the laser operational.
- d. Lost profits of approximately \$5,285.00 each day installation of the laser has been and continues to be delayed.

17. As a result of AMS's fraudulent misrepresentations, Conotech has retained counsel and seeks reimbursement for its reasonable attorney fees.

#### **G. REQUEST FOR RELIEF**

For these reasons, Conotech asks for judgment against AMS for the following:

- a. Damages of approximately \$985,000.00 resulting from Defendant's breach.
- b. Reasonable attorney fees.
- c. Prejudgment and postjudgment interest.
- d. Costs of suit.
- e. All further relief the Court deems appropriate.

This 8<sup>th</sup> day of May, 2006.

Respectfully submitted,

**SCOTT, HULSE, MARSHALL, FEUILLE,  
FINGER & THURMOND, P.C.**

mailing address:

P.O. Box 99123

El Paso, Texas 79999-9123

street address:

1100 Chase Tower

201 East Main Drive

El Paso, Texas 79901

(915) 533-2493 telephone

(915) 546-8333 telecopier

By: 

**J. L. JAY**

State Bar No. 10595320

**KATARID. BUCK**

State Bar No. 24040598

Attorneys for Conotech, LLC

**Richard De Santos**

**From:** John Ruppert [jruppert@accuratemachinerysales.com]  
**Sent:** Monday, September 12, 2005 3:07 PM  
**To:** richardd@nrsupply.com  
**Subject:** Triumph Laser

John Ruppert  
Accurate Machinery Sales, Inc.  
215 SW 21st Terrace  
Fort Lauderdale, FL. 33312  
www.accuratemachinerysales.com  
Ph. 954-587-0362  
Fax 954-587-6211  
jruppert@accuratemachinerysales.com

LASER	235,000.00
LIFT	12,000.00
ADD EQUIP	<u>4,200.00</u>
	251,200.00
Deposit	<u><u>(25,000.00)</u></u>
	<u><u>216,200.00</u></u>

Henry has signed and accepted this and says the deposit should come from you.

Our bank info is:

PLEASE WIRE TRANSFER ANY DEPOSITS OR FINAL PAYMENTS TO;

**COLONIAL BANK NA**

**1451 NW 62ND STREET, SUITE 212**

**FT. LAUDERDALE, FL. 33309**

**ABA # 0620-0131-9**

FOR CREDIT TO THE ACCOUNT OF;

**ACCURATE MACHINERY SALES INC,**

**215 SW 21ST TERRACE**

**FORT LAUDERDALE, FLORIDA 33312**

**ACCOUNT # 0110882401**

## **ACCURATE MACHINERY SALES INC.**

215 SW 21ST TERRACE, FORT LAUDERDALE, FL. 33312

800-281-7518, 954-587-0362, FAX 954-587-6211

www.accuratemachinerysales.com

email: ams@accuratemachinerysales.com

**EXHIBIT A**



**PROFORMA 91603-01**

9/12/2005

Conotech  
7125 Industrial  
El Paso, TX. 79915

**DESCRIPTION**

One Trumpf System model L2503EII serial number 902894 complete with 2600 watt resonator, CNC control, chiller, shuttle table, manuals and all other parts necessary to make the machine operational..

PRICE-----\$235,000.00

Trumpf liftmaster semi automatic loading arm (OPTIONAL) \$ 12,000.00

**TERMS**

- (A) \$35,000.00 deposit upon signed acceptance.
- (B) \$200,000.00 prior to shipping.
- (C) AMS INC. will deliver the machine to Juarez, MX., the buyer will unload, place the machine, supply electrical/air, gases (vaporizer if necessary) and provide employees to help with all the non technical aspects of the installation.
- (D) AMS, Inc. will provide a technician to start up the machine, and run test parts to insure the machine is running Properly and 3 days of training.
- (E) This machine is sold free and clear of all liens and encumbrances and title will pass to the buyer upon payment in full.
- (F) This offer is subject to prior sale.

Accepted:

\_\_\_\_\_(LS)

Date: \_\_\_\_\_

**TERMS:** Cash or Cashiers Check with order and all equipment is FOB on floor from sold location unless otherwise stated. All equipment subject to prior sales and is exclusive of any government tax. Seller is not responsible for any shipping or parts delays beyond our control. Equipment descriptions are intended only as a guide and their accuracy is not guaranteed. - **CONDITIONS:** The equipment is sold "AS IS WHERE IS", there are no EXPRESS OR IMPLIED warranties which extend beyond the description on the face hereof. Quotation subject to change without notice. All agreements and/or contracts made by sales person are subject to approval. - **EQUIPMENT SAFETY:** It is the buyer's/user's responsibility to provide proper safety devices and equipment to safeguard persons from harm resulting from any particular use, operation or set-up, and to adequately safeguard equipment to conform to all Federal, State, Local Government Safety Standards and all Industrial Standards. - **INDEMNIFICATION:** Buyer/User agrees to indemnify and hold harmless Seller and Salespersons from any and all claims or liabilities caused by or arising from the equipment on the face hereof. **ATTORNEY'S FEES:** Buyer agrees to pay all cost of collection including attorney's, trial and appellate fees in the event of any litigation which arises from this agreement. **APPLICABLE LAW:** This agreement shall be a Florida contract and shall be interpreted and administered for all purposes under the laws of Florida. **ENTIRE AGREEMENT:** This document represents the entire agreement between seller and buyer unless otherwise stated on the face hereof.

**TRUMPF DUAL PALLET FLYING OPTIC LASER CENTER**

MODEL NUMBER	L2503E-II
YEAR OF MFG.	1995 (New resonator in 2001)
SERIAL NUMBER	902894
CONTROL	BOSCH TRUMAGRAPH CC 220
SHEET CAPACITY	60" X 120"
Z AXIS TRAVEL	3.9" NON CONTACT
TABLE SPEED RAPID	2362 IPM, 3300 SIMULTANIOUS

EQUIPPED WITH: AUTOMATIC SHUTTLE PALLETS, FLYING OPTICS, 32 BIT CONTROL, AC SERVO DRIVE SYSTEM, NON CONTACT CUTTING HEAD, PROGRAMMABLE HIGH PRESSURE ASSIST GAS (7-350 PSI), CHILLER.

### **LASER SPECIFICATIONS**

LASER RESONATOR MFG.  
HOURS  
POWER CAPACITY  
GATING FREQUENCY

TRUMPF TLF 2600, (New 2001)  
9600  
2600 WATT CW,  
100HZ - 10KHZ

**PRICE**

**\$235,000.00**

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Conotech, LLC, a Nevada limited liability corporation

(b) County of Residence of First Listed Plaintiff Carson City, Nevada  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

See attached.

**DEFENDANTS**

Accurate Machinery Sales, Inc., a Florida corporation

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Unknown

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332(a)(1)

Brief description of cause:

breach of sales contract, breach of warranty, fraud

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \$985,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

05/09/06

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 31934 AMOUNT \$350.00 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**CIVIL COVER SHEET  
ATTACHMENT**

**I(c). Attorneys (Firm Name, Address, and Telephone Number)**

**J.L. Jay**

**Katari D. Buck**

**Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C.**

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